

REMARKS

This is in response to the Office Action mailed on June 2, 2004.

Claims 1-5, 15, 18, 20, 28-30, 34-40, 46, 47, 50, 52, 60-62, and 66-70 are amended, no claims are canceled, and claims 93-95 are added; as a result, claims 1-95 are now pending in this application, where claims 1-5, 15-72, and 93-95 are pending examination. The amendments to the claims are fully supported by the specification as originally filed. No new matter is introduced. Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

Claims 1, 15, and 47 find support in the specification, for example, on page 7, line 14 – page 8, line 8, line 7. Dependents claims 2, 3, 18, 20, 28-30, 46, 50, 52, and 60-62 are amended in line with amendments to claims 1, 15, and 47. Dependent claims 34 and 35 are amended to clarify these claims.

Claim 4 as amended is written in independent form including the elements of its base claim and additional features. Support for claim 4 can be found in the specification, for example, on page 9, lines 5-22. Dependent claim 5 is amended in line with amendments to claim 4.

Claim 36 as amended is written in independent form including the elements of its base claim and additional features. Support for claim 36 can be found in the specification, for example, on page 9, lines 5-22. Dependent claims 37-40 are amended in line with amendments to claim 36.

Claim 66 as amended is written in independent form including the elements of its base claim and additional features. Support for claim 66 can be found in the specification, for example, on page 9, lines 5-22. Dependent claims 67-70 are amended in line with amendments to claim 66.

§102 Rejection of the Claims

Claims 1-2, 15, 18-21, 24, 47, 50-53 and 56, were rejected under 35 USC § 102(b) as being anticipated by Anderson (U.S. Patent 5,721,783). Applicant traverses these grounds of rejection of the claims.

Applicant cannot find in Anderson a disclosure, teaching, or suggestion of a method including programming software in a hearing aid through a mobile device using at least one standard mobile wireless communication protocol as recited in claim 1. Anderson deals with a

remote processor unit (RPU) that interacts with a hearing aid. *See Anderson Summary*. The Office Action cites column 27, lines 4-24 in Anderson with respect to programming a hearing aid system. In the cited section, Anderson deals with programming the RPU. Applicant has found in Anderson at column 22, 44-61 a discussion regarding loading information into a default parameter storage in a hearing aid. However, Applicant submits that loading information into a default parameter storage in a hearing aid in Anderson is distinctly different from programming software in a hearing aid as recited in claim 1. Therefore, Applicant respectfully submits that Anderson does not anticipate claim 1, since Anderson does not teach the identical invention in as complete detail as is contained in claim 1. Further, Anderson does not teach each and every claim element arranged as in claim 1. Thus, Applicant submits that claim 1 is patentable over Anderson for at least the reasons state above.

Applicant cannot find in Anderson a disclosure, teaching, or suggestion of a system including a mobile device adapted to program software in a hearing aid, where the mobile device is adapted to use at least one standard mobile wireless communication protocol to program the software as recited in claim 15. Anderson deals with a remote processor unit (RPU) to interact with a hearing aid. *See Anderson Summary*. The Office Action cites column 25, lines 15-50 in Anderson with respect to a mobile device to program a hearing aid system. In the cited section, Anderson deals with an arrangement to program the RPU. Applicant has found in Anderson at column 22, 44-61 a discussion regarding loading information into a default parameter storage in a hearing aid. However, Applicant submits that a hearing aid configured to receive information into a default parameter storage in the hearing aid in Anderson is distinctly different from a hearing aid configured to receive software as recited in claim 15. Therefore, Applicant respectfully submits that Anderson does not anticipate claim 15, since Anderson does not teach the identical invention in as complete detail as is contained in claim 15. Further, Anderson does not teach each and every claim element arranged as in claim 15. Thus, Applicant submits that claim 15 is patentable over Anderson for at least the reasons state above.

Applicant cannot find in Anderson a disclosure, teaching, or suggestion of a system including a terminal adapted to program software in a hearing aid, where the terminal is adapted to use at least one standard wireless communication protocol to program the software as recited in claim 47. Anderson deals with a remote processor unit (RPU) to interact with a hearing aid.

See Anderson Summary. The Office Action cites column 25, lines 15-50 in Anderson with respect to a terminal to program a hearing aid system. In the cited section, Anderson deals with an arrangement to program the RPU. Applicant has found in Anderson at column 22, 44-61 a discussion regarding loading information into a default parameter storage in a hearing aid. However, Applicant submits that a hearing aid configured to receive information into a default parameter storage in the hearing aid in Anderson is distinctly different from a hearing aid configured to receive software as recited in claim 47. Therefore, Applicant respectfully submits that Anderson does not anticipate claim 47, since Anderson does not teach the identical invention in as complete detail as is contained in claim 47. Further, Anderson does not teach each and every claim element arranged as in claim 47. Thus, Applicant submits that claim 47 is patentable over Anderson for at least the reasons state above.

Claim 2, claims 18-21, 24, and claims 50-53 and 56 depend on claims 1, 15, and 47, respectively, and are patentable over Anderson for at least the reasons stated above and in further view of the elements of these dependent claims.

Applicant respectfully requests withdrawal of these rejection of claims 1-2, 15, 18-21, 24, 47, 50-53 and 56, and reconsideration and allowance of these claims.

§103 Rejection of the Claims

Claims 3-5, 16-17, 25-26, 48-49, and 57-58 were rejected under 35 USC § 103(a) as being unpatentable over Anderson (U.S. Patent No. 5,721,783). Applicant traverses these grounds for rejections of these claims.

Claim 3 is dependent on claim 1 and is patentable over Anderson for at least the reasons stated above with respect to the application of Anderson to claim 1 above.

Applicant cannot find in Anderson a teaching or suggestion of a method including receiving a distributed application in a mobile device and using the distributed application to program a hearing aid as recited in claim 4. Thus, Applicant submits that claim 4 is patentable over Anderson. Claim 5 is dependent on claim 4 and is patentable over Anderson for at least the reasons stated above with respect to claim 4.

Claims 16, 17, 25, 26, and claims 48, 49, 57, and 58 depend from claims 15 and 47, respectively, and are patentable over Anderson for at least the reasons stated above with respect to the application of Anderson to claims 15 and 47 above.

Applicant respectfully requests withdrawal of these rejections of claims 3-5, 16-17, 25-26, 48-49, and 57-58, and reconsideration and allowance of these claims.

§103 Rejection of the Claims

Claims 22-23 and 54-55 were rejected under 35 USC § 103(a) as being unpatentable over Anderson (U.S. Patent No. 5,721,783) in view of Shennib (U.S. Patent No. 5,197,332).

Claims 27-35 and 59-65 were rejected under 35 USC § 103(a) as being unpatentable over Anderson (U.S. Patent No. 5,721,783) in view of Leppisaari et al. (U.S. Patent No. 6,717,925).

Claims 43-46 were rejected under 35 USC § 103(a) as being unpatentable over Anderson (U.S. Patent No. 5,721,783) in view of Fazio (U.S. Patent No. 6,590,986).

Claims 42 and 72 were rejected under 35 USC § 103(a) as being unpatentable over Anderson (U.S. Patent No. 5,721,783) as modified by Leppisaari et al. (U.S. Patent No. 6,717,925) as applied to claims 15 and 31 above, and further in view of Boesen (U.S. Patent No. 6,738,485).

Applicant reserves the right to traverse the application of Boesen (U.S. Patent No. 6,738,485) and/or Browning (U.S. Patent No. 6,707,581) by the Office Action as prior art. Boesen and Browning are continuations-in-part filed after the filing date of the instant application. Thus, Applicant submits that material first introduced in these patents relative to their parent patents is not prior art with respect to the instant claims.

Applicant reserves the right to swear behind Fazio (U.S. Patent No. 6,590,986), Leppisaari et al. (U.S. Patent No. 6,717,925), and Boesen (U.S. Patent No. 6,738,485) at a later date.

Applicant traverses these grounds for rejections of claims 22-23, 27-35, 42-46, 54-55, 59-65, and 72.

As noted above with respect to claims 1, 15, and 47, Applicant submits that Anderson lacks a teaching or suggestion regarding a method and regarding a system to program software in

a hearing aid as recited in claims 1, 15, and 47. Thus, Anderson does not teach all the elements of claims 1, 15, and 47. Further, Anderson recites at column 2, lines 19-39:

It is an object of the present invention to provide a new and useful auditory aid for hearing-impaired persons (i.e., those having certain residual hearing) by removing audio signal enhancement functions from the earpiece and placing them in an RPU. Use of an RPU provides several advantages over systems that attempt to place all system capabilities within the earpiece. The RPU approach allows a simple earpiece design comprising a miniature low-power wireless transceiver, microphone and speaker. Note that the speaker is also known in the hearing aid art as a "receiver," but the term "speaker" is used here to avoid confusion (similarly, the term "talker," not "speaker," is used to describe a human producing vocal sounds). The resulting earpiece is extremely small, can be hidden from view in the ear canal if desired, and allows complete freedom of movement when a primary two-way wireless link to the RPU is used. Processing for all major system capabilities, such as amplification and other forms of signal enhancement, takes place in the RPU where size and power constraints are relaxed, leading to a cost-effective design.

Applicant submits, in view of the above quote, that Anderson teaches away from claims 1, 15, and 47. Since Anderson teaches away from independent claims 1, 15, and 47, the combination of one or more cited references and Anderson with respect claims 1, 15, and 47 does not properly establish a *prima facie* case of obviousness with respect to claims 1, 15, and 47.

Further, combining any reference(s) with Anderson by altering Anderson to include features that provide enhancement functions in Anderson's hearing aid would destroy the stated purpose of Anderson: "[i]t is an object of the present invention to provide a new and useful auditory aid for hearing-impaired persons (i.e., those having certain residual hearing) by removing audio signal enhancement functions from the earpiece and placing them in an RPU." If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP § 2143.01. Thus, Applicant submits that claims 1, 15, and 47 are patentable over Anderson in view of the cited references herein.

Claims 22-23, 27-35, and 42-46, and claims 54-55, 59-65, and 72 depend on claims 15 and 47, respectively, and are patentable over Anderson in view of the cited references herein for at least the reasons stated above and in further view of the elements of these dependent claims.

Applicant respectfully requests withdrawal of these rejection of claims 22-23, 27-35, 42-46, 54-55, 59-65, and 72, and reconsideration and allowance of these claims.

§103 Rejection of the Claims

Claims 36-40 were rejected under 35 USC § 103(a) as being unpatentable over Anderson (U.S. Patent No. 5,721,783) in view of Browning et al. (U.S. Patent No. 6,707,581). Applicant traverses these grounds of rejection of these claims.

Applicant reserves the right to swear behind Browning (U.S. Patent No. 6,707,581) at a later date.

Applicant cannot find in Anderson or in the combination of Anderson and Browning a teaching or suggestion of a system including a distributed application and a mobile device, where the mobile device is adapted to use the distributed application to program a hearing aid as recited in claim 36. The Office Action proposes the combination of Browning to Anderson regarding a Java application, where the Office Action states:

Browning teaches the system of at least one Java application includes an applet (see col. 2, lines 1-19); and the system of the applet is adapted to move from the server (see fig. 6, 76) to the mobile device (70) so as to execute on the mobile device to interact with the system (see col. 6 line 69-col. 7 line 12); and the system of the applet is adapted to receive information to the server (see col. 6 line 69-col. 7 line 12); and the system of the applet is adapted to receive information from the server, and wherein the applet is adapted to transmit information to the server (see col. 6 line 69-col. 7 line 12); and the system of the mobile device includes a browser that is adapted to receive the applet to execute on the mobile device so as to interact with the system (see col.6 line 69-col.7 line 12).

Browning was filed on 27 June 2000 after the instant application, which was filed on 20 January 2000. Browning was filed as a continuation-in-part of application No. 08/931,885, filed on 17 September 1997, now Pat. No. 6,081,629. Applicant cannot find the above cited passages column 6, line 69 – column 7, line 12 and Figure 6 in Patent No. 6,081,629. Thus, Applicant submits that with respect to the cited material from Browning, Browning is not prior art with respect to the instant claims.

In addition, there is no motivation to combine Browning with Anderson since, as previously quoted from Anderson, Anderson recites “[i]t is an object of the present invention to provide a new and useful auditory aid for hearing-impaired persons (i.e.,

those having certain residual hearing) by removing audio signal enhancement functions from the earpiece and placing them in an RPU. Use of an RPU provides several advantages over systems that attempt to place all system capabilities within the earpiece.” Thus, Applicant submits that claim 36 is patentable over Anderson in view of Browning.

Claims 37-40 depend on claim 36 and are patentable over Anderson in view of Browning for at least the reasons stated above and in further view of the elements of these dependent claims.

Applicant respectfully requests withdrawal of these rejection of claims 36-40, and reconsideration and allowance of these claims.

§103 Rejection of the Claims

Claims 41 and 66-71 were rejected under 35 USC § 103(a) as being unpatentable over Anderson (U.S. Patent No. 5,721,783) in view of Knappe (U.S. Patent No. 6,061,431).

Applicant reserves the right to swear behind Knappe (U.S. Patent No. 6,061,431) at a later date.

Applicant cannot find in Anderson or in the combination of Anderson and Knappe a teaching or suggestion of a system including a distributed application and a terminal, where the terminal is adapted to use the distributed application to program a hearing aid as recited in claim 66. The Office Action states “Anderson does not clearly teach the system of further comprising at least one distributed application adapted to interact with the hearing aid system, wherein the at least one distributed application is adapted to be stored on the server.” The Office Action combines Anderson with Knappe citing Knappe column 2, line 19 – column 3, line 10 with respect to a distributed application. Knappe deals with a hearing compensation system to provide audio compensation service for a telephone accessing communication network. Applicant cannot find in Knappe a teaching or suggestion of a distributed application in a mobile device to program a hearing aid as recited in claim 66. A hearing compensation system to provide audio compensation service for a telephone accessing communication network in Knappe is distinctly different from a terminal adapted to use a distributed application to program a hearing aid. Since neither Anderson nor Knappe teaches or suggests a system including a terminal adapted to use a distributed application to program a hearing aid as recited in claim 66,

the combination of Anderson and Knappe does not teach or suggest all the elements of claim 66. Thus, Applicant submits that claim 66 is patentable over Anderson in view of Knappe for at least the reasons provided herein.

Claims 67-70 depend on claim 66 and are patentable over Anderson in view of Knappe for at least the reasons stated above and in further view of the elements of these dependent claims.

Claims 41 and 71 depend from claims 15 and 47, respectively, and are patentable over Anderson in view of Knappe for at least the reasons stated herein.

Applicant respectfully requests withdrawal of these rejection of claims 41 and 66-71, and reconsideration and allowance of these claims.

New Claims

Claims 93-95 are added and are in line with the subject matter of the claims pending examination. No new matter is introduced. Applicant respectfully requests consideration and allowance of these claims.

Applicant respectfully requests allowance of claims 1-5, 15-72, and 93-95.

Assertion of Pertinence

Applicant has not responded to the assertion of pertinence stated for the patents cited, but not relied upon, by the Office Action since these patents are not relied upon as part of the rejections in this Office Action. Applicant is expressly not conceding they have any pertinence and reserves the right to respond more fully should any of them form a part of some future rejection.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 371-2157 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

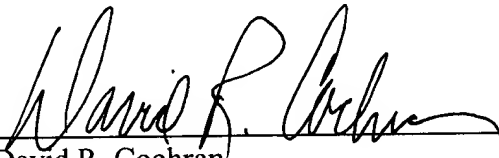
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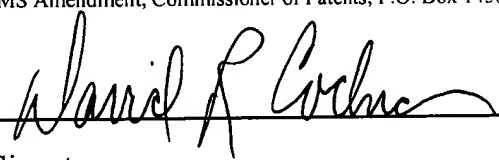
Date 2 November 2004

By


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 2nd day of November, 2004.

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